

SENATE RECORD VOTE ANALYSIS

105th Congress
2nd Session

Vote No. 158

June 11, 1998, 5:45 p.m.
Page S-6175 Temp. Record

TOBACCO BILL/\$1,000 Per Hour Fee Cap for Lawyers

SUBJECT: National Tobacco Policy and Youth Smoking Reduction Act . . . S. 1415. McCain motion to table the Faircloth/Sessions amendment No. 2701 to the Daschle (for Durbin) amendment No. 2437, as amended, to the instructions (Gramm amendment No. 2436) to the Gramm motion to recommit the Commerce Committee modified substitute amendment No. 2420.

ACTION: MOTION TO TABLE AGREED TO, 50-45

SYNOPSIS: The "Commerce-2" committee substitute amendment (see NOTE in vote No. 142) to S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act, will raise up to \$265.0 billion over 10 years and up to \$885.6 billion over 25 years from tobacco company "payments" (assessments) and from "look-back" penalties that will be imposed on tobacco companies if they fail to reduce underage use of tobacco products. Most of the money will come from the required payments (\$755.67 billion over 25 years). Additional sums will be raised from other fines and penalties on tobacco companies, and the required payments will be higher if volume reduction targets on tobacco use are not met. The tobacco companies will be required to pass on the entire cost of the payments to their consumers, who are primarily low-income Americans. By Joint Tax Committee (JTC) estimates, the price of a pack of cigarettes that costs \$1.98 now will rise to \$4.84 by 2007. The amendment will require the "net" amount raised, as estimated by the Treasury Department, to be placed in a new tobacco trust fund. (The net amount will be equal to the total amount collected minus any reductions in other Federal revenue collections that will occur as a result of increasing tobacco prices. For instance, income tax collections will decline because there will be less taxable income in the economy). The JTC estimates that the amendment will raise up to \$232.4 billion over 9 years, but only \$131.8 billion net. Extending the JTC's assumptions through 25 years, a total of \$514.2 billion net will be collected. The amendment will require all of that money to be spent; 56 percent of it will be direct (mandatory) spending. The Federal Government will give States 40 percent of the funds and will spend 60 percent. Medicare will not get any of the funding in the first 10 years unless actual revenues are higher than estimated in this amendment (in contrast, the Senate-passed budget resolution required any Federal share of funds from tobacco legislation

(See other side)

| YEAS (50) | | | NAYS (45) | | | NOT VOTING (3) | |
|----------------------------|--------------------------|---------------|----------------------------|-------------------------|-----------|-----------------------|------------------------|
| Republicans (12 or 23%) | Democrats (38 or 90%) | | Republicans (41 or 77%) | Democrats (4 or 10%) | | Republicans (1) | Democrats (2) |
| Bennett | Akaka | Kerrey | Abraham | Hutchinson | Byrd | Specter- ³ | Bingaman- ² |
| Campbell | Baucus | Kerry | Allard | Hutchison | Dodd | | Bumpers- ² |
| Cochran | Biden | Kohl | Ashcroft | Inhofe | Dorgan | | |
| D'Amato | Breaux | Landrieu | Bond | Kempthorne | Lieberman | | |
| DeWine | Bryan | Lautenberg | Brownback | Kyl | | | |
| Gorton | Cleland | Leahy | Burns | Lugar | | | |
| Hatch | Conrad | Levin | Chafee | Mack | | | |
| Jeffords | Daschle | Mikulski | Coats | McCain | | | |
| Roth | Durbin | Moseley-Braun | Collins | McConnell | | | |
| Shelby | Feingold | Moynihan | Coverdell | Murkowski | | | |
| Smith, Gordon | Feinstein | Murray | Craig | Nickles | | | |
| Thompson | Ford | Reed | Domenici | Roberts | | | |
| | Glenn | Reid | Enzi | Santorum | | | |
| | Graham | Robb | Faircloth | Sessions | | | |
| | Harkin | Rockefeller | Frist | Smith, Bob | | | |
| | Hollings | Sarbanes | Gramm | Snowe | | | |
| | Inouye | Torricelli | Grams | Stevens | | | |
| | Johnson | Wellstone | Grassley | Thomas | | | |
| | Kennedy | Wyden | Gregg | Thurmond | | | |
| | | | Hagel | Warner | | | |
| | | | Helms | | | | |

VOTING PRESENT (2)
Lott Boxer

EXPLANATION OF ABSENCE:
1—Official Business
2—Necessarily Absent
3—Illness
4—Other

SYMBOLS:
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

to be used to strengthen Medicare; see vote No. 84).

The Gramm motion to recommit with instructions would direct the Commerce Committee to report the bill back with the inclusion of the amendments already agreed to and the Gramm amendment No. 2437. The Gramm amendment would adopt the Gregg/Leahy amendment (see NOTE below) and would eliminate the marriage penalty in the tax code on couples earning less than \$50,000 per year. (Under current law, all married people are taxed at a higher rate than they would be if they were single and their income were divided between them). The tax relief would be structured so that married couples that received it would not consequently lose Earned Income Credit (EIC) eligibility.

The Durbin amendment, as amended, would cap the look-back penalties at \$7.7 billion annually and would shift the burden of those penalties on to those companies that have brands that do not meet the youth smoking reduction targets (see vote No. 149 for details). As amended by a Craig/Coverdell amendment, it would also fund anti-drug programs (see vote No. 151). As amended by a Gramm modified amendment, it would phase-in marriage-penalty relief over 10 years for married tax filers with incomes under \$50,000, and it would provide immediate 100 percent deductibility of health care costs for self-employed taxpayers (see vote No. 154). As amended by a Kerry amendment, it would require States to spend a quarter of their funding from this bill on Child Care Development Block Grants (see vote No. 157).

The Faircloth/Sessions amendment would restrict lawyers to being paid no more than \$1,000 per hour, plus 200 percent of actual out-of-pocket expenses, for their work on tobacco litigation related to this bill. The court of jurisdiction in which a suit was brought, or an arbitration panel in that jurisdiction, would determine the appropriate fees up to the cap. The restriction would apply both to attorneys for plaintiffs and for defendants. Legal work on government tobacco suits related to Medicaid, past and present, and legal work related to class-action tobacco lawsuits would be covered. The Senate earlier tabled an amendment to limit tobacco lawyer fees to \$250 per hour (see vote No. 142).

Debate was limited by unanimous consent. After debate, Senator Kerry moved to table the amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

NOTE: Two Gregg/Leahy amendments were pending at the time of the vote (see vote No. 145).

Those favoring the motion to table contended:

The basic principle that Congress should in any way try to set the pay of private individuals is flawed. For all of the reasons that we opposed the earlier amendment to cap attorney fees, we oppose this amendment.

While favoring the motion to table, some Senators expressed the following reservations:

We agree with our colleagues in principle but we disagree with the particular provisions of their amendment. Congress can and should examine the fee arrangements because the parties involved have asked for Congress to get involved, and some of the fee arrangements that have been negotiated between trial lawyers and States attorneys general are outrageously, unethically high and should be lowered. Our sole objection to this amendment is that it treats the lawyers involved too uniformly. The highly skilled attorneys who started these cases years ago when their chances of success were extremely remote, and who developed the novel legal theories that brought the disreputable tobacco companies to their knees, deserve considerably more than \$1,000 per hour. They took huge risks and they deserve huge rewards. Many trial lawyers in other States, though, did virtually no work and took almost no risks. They signed sweetheart, unethical deals with State officials who were their close political allies, they photocopied the lawsuits from other States, and they sat back and waited for the global settlement. Such lawyers frankly deserve little or no pay, contract or not, because they should not have been hired in the first place. We oppose this amendment, but we will support a more equitable cap on fees.

Those opposing the motion to table contended:

Many, but certainly not all, of the States unethically hired trial lawyers to pursue lawsuits against tobacco companies on a contingency-fee basis. As a result of those suits, lawyers in some States, such as Texas, stand to make more than \$92,000 per hour for the limited amount of work that they have done. Contingency fees are frowned upon in the law, but are accepted as the lesser of two evils for poor people who otherwise could not afford to hire lawyers. Every State can afford to hire lawyers, though, so no State should have used contingency fees. This bill will require the tobacco companies to pass on to their customers the entire costs of the \$755 billion payments they will make over the next 25 years. Most smokers are low-income Americans. Our colleagues may feel comfortable picking the pockets of low-income Americans to make a handful of lawyers multimillionaires, and billionaires, just because some States entered into unethical contracts with those lawyers. We do not. We therefore strongly oppose the motion to table.